

DEC 10 2007

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

**SENSITIVE**

Friends of Jeff Smith and Steve Smith, )  
in his official capacity as treasurer )  
Joan Barry in Congress and Kirk Benjamin, ) MUR 5493  
in his official capacity as treasurer )

**GENERAL COUNSEL'S REPORT #2**

**I. ACTIONS RECOMMENDED**

(1) Take no further action as to the unknown political committee;

(2) Find no reason to believe that Friends of Jeff Smith and Steve Smith,  
in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f);

(3) Find no reason to believe that Joan Barry in Congress and Kirk  
Benjamin, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b), and  
441a(f);

(4) Take no further action as to Joan Barry in Congress and Kirk  
Benjamin, in his official capacity as treasurer with regard to the violation of 2 U.S.C.  
§ 441d;

(5) Approve the appropriate letters;

(6) Close the file; and

(7) [REDACTED]

**II. INTRODUCTION**

This matter was initiated through a complaint filed by Russ Carnahan for  
Congress and Todd Allen alleging that Friends of Jeff Smith ("Smith Committee"),  
Joan Barry in Congress ("Barry Committee") and Eric Lillard ("Lillard") violated the

[REDACTED]

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1 Federal Election Campaign Act of 1971, as amended ("Act"), and Commission  
2 regulations by working together to obscure the identity of those individuals  
3 responsible for disseminating "false and inflammatory information" in the form of  
4 three flyers and a postcard to Missouri's 3<sup>rd</sup> District residents during the 2004  
5 Congressional primary election. *See* Complaint with Attachments.<sup>1</sup> The  
6 Complainant also alleged that none of the communications contained the proper  
7 disclaimers and that the Barry and Smith Committees' attempts to obscure the  
8 identity of those individuals responsible for distributing the information may have  
9 resulted in possible reporting violations for failing to disclose campaign expenditures  
10 and excessive contributions.

11 The four communications at issue are a postcard<sup>2</sup> mailed to 3<sup>rd</sup> District  
12 residents on or about July 23, 2004, and three flyers, one of which was allegedly  
13 mailed anonymously prior to the Primary election. *See* Attachment 3. The first  
14 communication, a postcard, contained a disclaimer stating that it was paid for by  
15 www.rustycarnahan.org and was "not authorized by any candidate or candidate  
16 committee," but does not otherwise identify the person(s) who paid for the message.

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<sup>1</sup> Russ Carnahan was a Democratic candidate in the primary election for the 3<sup>rd</sup> District of Missouri Congressional seat vacated by Richard Gephardt. At the time of his candidacy, Carnahan was a State Representative for the 59<sup>th</sup> District of Missouri and had been since his election in 2000. Joan Barry and Jeff Smith were also Democratic candidates in the primary election.

<sup>2</sup> The postcard contains a picture of what appears to be a man lying on a beach in a hammock with the caption reading "MISS MORE WORK than 97% of your colleagues and get a promotion?" The backside of the postcard states "Has Rusty Carnahan gotten the job done in Jeff City?" and that Carnahan "missed more votes than all but 4 of his 163 colleagues in the State House this year." The flyers are similar in nature in that they all contain information regarding the votes Carnahan allegedly missed as a State Representative as support for the position that he should not be elected to Congress.

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1 Attachment 1. The Complainant asserts that it was able to trace the source of the  
2 postcard to an individual, Eric Lillard, allegedly connected to the Smith Committee.<sup>3</sup>

3 The second communication, a flyer, was allegedly distributed at a joint press  
4 conference held by Barry and Smith on July 23, 2004. Attachment 3. The third and  
5 fourth communications, also flyers, were purportedly "widely distributed and mailed  
6 throughout the district in white envelopes bearing no disclaimer or even a return  
7 address to indicate the source." *Id.* The complaint further alleges that individuals  
8 working on behalf of the Barry Committee distributed the third communication at a  
9 press conference, presumably the same joint press conference referred to above.

10 In response, the Barry Committee admitted that it distributed the three flyers  
11 as part of a press packet in connection with a joint press conference and asserts that  
12 the cover of the press packet (which they did not attach to its response) contained an  
13 adequate disclaimer.<sup>4</sup> The Smith Committee and Lillard, in their responses, denied  
14 any affiliation with one another or any involvement in the distribution of the postcard  
15 and/or flyers. *See Smith Committee and Lillard Responses.*

16 At the reason to believe stage, there was information to strongly suggest the  
17 involvement of an unknown individual(s) or political committee in soliciting Lillard  
18 to host the website containing the negative Carnahan information and the mailing of

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<sup>3</sup> Mr. Lillard is the CEO of a St. Charles, Missouri based company called Web Expressions, Inc. and the domain registrant of the website in question at the time the postcard was mailed.

<sup>4</sup> The Barry Committee, in its reason to believe response, asserted that no more than 12 press packets were distributed to the press in connection with the joint press conference with Joan Barry and Jeff Smith. It stated that the cost of the press packets were minimal due to the limited number distributed. Although the Barry Committee did not place a cost on the materials, it appears likely that it would not have disbursed significant funds in connection with the press packets since they would have been created and reproduced using its own paper and photocopier. In addition, the Barry Committee denied any involvement or knowledge of the person(s) involved in its creation or distribution of the postcard. *See Barry Committee RTB Response.*

1 the postcard and flyers. *See* First General Counsel's Report dated August 1, 2005.  
2 Therefore, the Commission took no action as to the Smith and Barry Committees  
3 regarding the alleged violation of 2 U.S.C. § 434(b) and 441a(f) pending the results of  
4 an investigation; found reason to believe that the Barry Committee violated 2 U.S.C.  
5 § 441d for its failure as a political committee to attach the appropriate disclaimer to  
6 public communications for which it made disbursements; and found reason to believe  
7 that an unknown political committee violated 2 U.S.C. § 441d by its failure to place  
8 an accurate and appropriate disclaimer on the postcard and possibly the flyers.<sup>5</sup>

9 The purpose of the investigation was to determine the person(s)/political  
10 committee responsible for the creation, financing and distribution of the postcard;  
11 whether the flyers were distributed as mass mailings to the 3<sup>rd</sup> District residents; and  
12 whether there were any violations on the part of the unknown political committee for  
13 its failure to disclose disbursements in connection with the postcard/flyers or its  
14 making of an excessive contribution to the Barry and/or Smith Committees.

15 In addition, if the investigation revealed that a political committee was  
16 involved in the distribution of the postcard, there could be a violation of 2 U.S.C.  
17 441d since it would have been required to place an accurate and appropriate  
18 disclaimer on the postcard. However, there would be no violation of 2 U.S.C. § 441d

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<sup>5</sup> Due to the fact that the available information at the time did not support the allegation that Lillard was acting as an agent or employee on behalf of the Smith Committee or that the Smith Committee was involved in the creation, financing or distribution of the postcard and/or flyers, the Commission found no reason to believe that Eric Lillard violated any provision of the Act or regulations and closed the file as to him. It now appears that Lillard was hired to register the website, [www.rustycarnahan.org](http://www.rustycarnahan.org), and place the negative information regarding Carnahan on that website but he was not involved in the creation, financing or distribution of the postcard or the flyers.

1 if the investigation revealed that an individual was responsible for the postcard  
2 because of a lack of express advocacy in the communication.

3 As a result of the investigation, we have reached five key factual conclusions  
4 regarding the person(s)/political committee responsible for the creation, financing,  
5 and distribution of the postcard and flyers that will be discussed in greater detail in  
6 the Investigation section of the Report. First, an entity called Voters for Truth (VFT)  
7 placed two orders over the Internet with a direct mail company named Advanced  
8 Media for the distribution of approximately 25,000 postcards to 3<sup>rd</sup> District residents.  
9 Second, we were unable to determine how many people may have been involved in  
10 the formation of VFT or the extent of their involvement, but it appears that an  
11 individual named Milton Ohlsen, III ("Ohlsen") was most likely the person  
12 responsible for the formation/activities of VFT. Third, we found no evidence to  
13 support the complaint's allegation that the Barry Committee and/or Smith Committee  
14 were involved in the distribution of the postcard or the anonymous mailing of the  
15 flyers in question.

16 Fourth, the evidence does not establish whether VFT funds were actually used  
17 to pay for the creation and distribution of the postcards. The circumstances suggest  
18 that Ohlsen may have paid for the postcards with his own funds and created VFT to  
19 conceal the fact that he was responsible for the negative attack on Carnahan, but the  
20 investigation was not able to uncover sufficient evidence to confirm this suspicion.  
21 Fifth, the Barry Committee distributed 12 press packets in conjunction with the joint  
22 press conference containing the flyers at issue, and, although they lacked the

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1 appropriate disclaimers, there was no evidence that any of those flyers were  
2 anonymously mailed to 3<sup>rd</sup> District residents.

3 Therefore, we recommend that the Commission: (1) take no further action as  
4 to the unknown political committee because there is no evidence indicating that a  
5 political committee paid for the postcard; (2) find no reason to believe that the Barry  
6 Committee and the Smith Committee violated 2 U.S.C. §§ 434(b) and 441a(f)  
7 because there is no evidence indicating that the Barry Committee was involved in the  
8 distribution of the postcard or accepted excessive contributions from Voters for  
9 Truth; and (3) take no further action regarding the Barry Committee's violation of  
10 2 U.S.C. § 441d based on prosecutorial discretion, *see Heckler v. Chaney*, 470 U.S.  
11 821 (1985), because the Barry Committee distributed only 12 press packets  
12 containing the flyers at issue that were not intended for general redistribution and  
13 circumstances indicate the costs associated with the press packets were likely  
14 minimal. We make no recommendation as to Milton Ohlsen for making  
15 disbursements to create and distribute the postcard because the postcard does not  
16 appear to contain express advocacy within the meaning of 11 C.F.R. § 100.22 and,  
17 therefore, did not require a disclaimer. *See* 11 C.F.R. § 110.11(a).

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1     **III.     RESULTS OF INVESTIGATION**

2             We initially focused on the paper trail documenting the postcard transaction,  
3     which led us to the conclusion that a direct mail company called Advanced Media  
4     distributed the postcards as a result of two orders placed over the Internet by an entity  
5     called VFT.<sup>6</sup> Prior to the reason to believe findings, we researched publicly available  
6     information and discovered that the bulk mail permit number 2371 noted on the  
7     postcard belonged to a direct mail services provider, Advanced Media. Through our  
8     informal contacts with Advanced Media and the issuance of a subpoena, we obtained  
9     copies of the invoices confirming that VFT placed two orders over the Internet for the  
10    distribution of 25,000 postcards totaling \$13,943.10 in the form of two cashier's  
11    checks drawn not on VFT's account but rather on an account of a company called  
12    Complete Contract Management ("CCM") controlled by Ohlsen. Attachment 1.  
13    Although the cashier's checks were drawn on CCM's account, its account was not the  
14    source of the funds used for the cashier's checks nor were any of its funds held as  
15    collateral to cover the cashier's checks. Furthermore, based on the dates of the  
16    activity in the VFT accounts, it appears unlikely that the funds from any of the VFT  
17    accounts were used to pay for the creation and distribution of the postcards by  
18    Advanced Media.

19            VFT appears to have only existed in the form of three checking accounts with  
20    Midwest Bank, all of which were opened on July 22, 2004 and are currently closed or

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<sup>6</sup> The contact person's name provided to Advanced Media, Robert Noxious, appears to be false and the post office box number does not exist within the zip code provided according to the U.S. Postal Service. In addition, the telephone number provided was no longer operational.

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1 contained very little money as of August 2006.<sup>7</sup> Attachment 2. The same address  
2 and phone number provided by VFT to Advanced Media had also been provided to  
3 the bank for all three VFT accounts. *Id.* The three VFT accounts were funded by  
4 various individuals<sup>8</sup> and had a total of \$26,750 in opening deposits. The three  
5 signatories on those accounts were Milton Ohlsen, Peter McElligott and Jason  
6 Wathen; and Ohlsen was the sole signatory on the CCM account used to draw the  
7 cashier's checks sent to Advanced Media, thereby making him the common link  
8 between VFT and the postcard transaction.

9 In our attempts to locate the signatories on the VFT accounts, we learned that  
10 the person(s) who opened the accounts provided identification numbers that were not  
11 legitimate taxpayer identification numbers, and the bank did not retain any other  
12 identification information that may have been used to open the accounts.<sup>9</sup> Upon  
13 locating Ohlsen, we deposed him and his testimony was generally vague,  
14 contradictory and lacking in credibility when compared with evidence obtained from  
15 other witnesses and documents.

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<sup>7</sup> The entity was never registered with the FEC as a political committee.

<sup>8</sup> We conducted telephone interviews with two individuals who provided the majority of the funds deposited into the VFT accounts, Adolphus Busch and Donald Musick, and found no evidence that either was involved in the VFT operation. Neither individual recalled knowing about Ohlsen, VFT or the circumstances under which the funds were provided to VFT. However, neither denied that they had, in fact, provided the funds to VFT. They simply stated that they both frequently give money to "political causes."

<sup>9</sup> The bank representative informed us that the taxpayer identification numbers provided for account number [REDACTED] for account numbers [REDACTED]. We attempted to obtain additional information regarding VFT through the taxpayer identification numbers, but learned that these numbers are actually social security numbers issued to a Theresa Hayduk of Washington, Pennsylvania and Susana Norcini of Miami, Florida, neither of whom appears to have any connection to this matter.

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1 Ohlsen claimed that VFT was not involved in the postcard transaction. Tr. at  
2 53. Instead, his company, Studio O<sup>10</sup>, was allegedly retained by an individual who  
3 referred to himself as "rustycarnahan.org" to "hire a printer and mail house" to  
4 distribute the postcard. Tr. at 52. He claimed that this unidentified male whom he  
5 met through the Smith Committee approached him with the job and that, while he  
6 was suspicious, he agreed to accept the job. Tr. at 54, 58-60. According to Ohlsen,  
7 he recalled possibly being paid as much as \$13,000 in cash for his services but never  
8 produced any transactional documentation. Tr. at 62.

9 Ohlsen also claimed that it was an "inadvertent mistake" to list VFT as the  
10 purchaser on the Advanced Media invoices and that he was unsure who provided this  
11 name to the vendor. Tr. at 70. While he admitted to being aware of the controversy  
12 surrounding the postcard, he never publicly acknowledged being involved. Tr. at 133-  
13 34. Ohlsen felt that he was just performing a job and was concerned about his name  
14 being associated with the postcard. *Id.*

15 According to Ohlsen, VFT was a "third party independent group during the  
16 '04 election" that did "political polling and research." Tr. at 11, 33. His alleged  
17 involvement included providing information on forming a third party committee. Tr.  
18 at 14. He claimed to not be involved in the opening of the VFT accounts and only  
19 agreed to be listed as a signatory at a later date when the accounts were being closed  
20 because he was owed an unspecified amount of money for "polling work" done on  
21 behalf of VFT. Tr. at 18-22, 33-34. Ohlsen was very vague about the nature of this

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<sup>10</sup> Ohlsen testified that CCM later became Studio O, a company registered in the state of Nevada. Tr. at 68.

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1 alleged "polling work" as well as the compensation provided. Ohlsen further testified  
2 that, although he was the beneficiary of some of the funds in the two accounts on  
3 which he was not listed as a signatory, he did not manage those accounts, nor did he  
4 deposit any of his personal funds into any of the VFT accounts. Tr. at 26, 110.

5 Ohlsen contended that Nick Adams and Artie Harris, of the Smith Committee,  
6 were two of the primary individuals involved in VFT in the early stages of the Smith  
7 campaign.<sup>11</sup> Tr. at 121. Ohlsen also provided testimony about the other signatories,  
8 Peter McElligott and Jason Wathen, who were his employees. We conducted  
9 telephone interviews of Adams, Harris, McElligott and Wathen, and we found all of  
10 these individuals more credible than Ohlsen regarding their alleged involvement in  
11 VFT. Nick Adams<sup>12</sup> and Artie Harris,<sup>13</sup> strongly deny any involvement or affiliation  
12 with VFT, and instead asserted that Ohlsen approached them expressing interest in  
13 doing some video work for the Smith campaign. However, both were suspicious of  
14 Ohlsen's true agenda because he never gave his real name, stating that he preferred to  
15 remain anonymous.

16 Adams had the impression that Ohlsen was some kind of "hired gun" for  
17 political committees, but he never mentioned VFT; and Harris stated that, upon  
18 Ohlsen's request, he provided Ohlsen with publicly available information on  
19 Carnahan's State Senate voting record that appeared to be similar to the content of the

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<sup>11</sup> Ohlsen also claimed that an individual named Steve Brown was responsible for soliciting funds on behalf of VFT. Tr. at 29, 163-4. We were not able to confirm the existence of this individual or to obtain any contact information for him.

<sup>12</sup> Adams worked in several capacities on the Smith Committee including treasurer, deputy campaign manager and finance director.

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1 postcard. Both Adams and Harris deny any firsthand knowledge of VFT or  
2 involvement in the distribution of the postcard. We believe that Ohlsen's goal was to  
3 implicate Adams and Harris, individuals who were connected to a  
4 committee that had been publicly accused of being involved in the distribution of the  
5 postcard, while at the same time obscuring and downplaying his true involvement in  
6 VFT.

7 McElligott admitted that, per Ohlsen's request, he agreed to be listed as a  
8 signatory on one of the VFT accounts. However, he stated that he never wrote any  
9 checks on the account and that he viewed Ohlsen as the "driving force" behind the  
10 formation of VFT and most likely the person responsible for the postcard. Ohlsen  
11 also asked him to deliver a disk to a volunteer from the Smith Committee<sup>14</sup> and to  
12 purchase a "throwaway" cell phone for Ohlsen's use.<sup>15</sup> On the other hand, Wathen  
13 denied that he ever agreed to be a signatory on any of the VFT bank accounts, but did

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<sup>13</sup> Harris was the communications/press director for the 2004 Smith campaign and worked on the campaign from February through August 2004.

<sup>14</sup> This could be the same meeting referred to by Lillard in his response to the Complaint, when he met with an unknown individual in order to obtain a cd-rom containing the information to be placed on the website ([www.rustycarnahan.org](http://www.rustycarnahan.org)) that would subsequently be contained in the postcard. See Lillard Response. It is possible that McElligott was led to believe he was meeting someone from the Smith Committee, when in fact, he was meeting with Lillard to pass on the cd-rom containing the website information.

<sup>15</sup> McElligott also noted that Ohlsen preferred to be called "Skip" and sometimes used the alias "Mike Scott" in some of his business dealings. The name "Mike Scott" is significant because Lillard has previously stated that an individual named "Mike" contacted him about creating and maintaining the website that was listed on the postcard and that contained information similar to that found on the postcard. There is a strong possibility that Ohlsen, using the name Mike, contacted Lillard, although we have not been able to confirm this suspicion.

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1 admit to providing Ohlsen with a copy of his driver's license that may have been used  
2 for that purpose.<sup>16</sup>

3 While the investigation provided us with a clearer picture of VFT and the  
4 postcard transaction than we had previously, we cannot establish the number of  
5 people involved in VFT's formation, the true extent of their involvement, or the full  
6 nature of its activities, if any. It is entirely plausible that Ohlsen orchestrated the  
7 entire plan, with the unknowing assistance of Lillard. Ohlsen, pretending to be  
8 Mike,<sup>17</sup> could have contacted Lillard to solicit his help in creating the website,  
9 www.rustycarnahan.org, that was listed on the postcard. It is also likely that the  
10 "throwaway" cell phone Ohlsen asked McElligott to purchase for his use was the  
11 same cell phone used to make contact with Lillard.<sup>18</sup>

12 Importantly, the circumstances suggest that Ohlsen paid for the postcards with  
13 his own personal funds and created VFT to conceal his involvement on the negative  
14 attack on Carnahan. However, there is insufficient evidence to confirm this  
15 suspicion because we have relatively little information about VFT other than  
16 Ohlsen's vague and contradictory testimony. In addition, while the circumstances

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<sup>16</sup> Wathen stated that he also only knew Ohlsen as "Skip" or "Mike." In addition, although Wathen denies agreeing to be listed as a signatory and writing checks on any of the VFT account, we have several checks from two of the VFT accounts that contain signatures purporting to be Wathen's. We find it unlikely that Ohlsen would have been able to use Wathen's driver's license information to list him as a signatory without his knowledge as has been suggested by Wathen. However, we do find Wathen's contention that he never signed any checks on behalf of VFT to be more credible. This suggests that Ohlsen may have forged Wathen's signature.

<sup>17</sup> As noted earlier, most of the individuals we spoke with did not know Ohlsen as Milton but rather "Skip" or "Mike."

<sup>18</sup> Furthermore, it is plausible that Ohlsen used information provided innocently by Harris to provide content for both the postcard and website, and used McElligott to pass the cd-rom containing the content information onto Lillard, again in an attempt to hide his involvement.

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1 suggest the possibility that Ohlsen, acting as "Mike," contacted Lillard to solicit his  
2 services in creating the website, the evidence does not support this scenario since  
3 Lillard never actually met "Mike." Furthermore, we cannot definitively link Ohlsen  
4 to the cell phone number used by "Mike" to contact Lillard due to the insufficiency of  
5 the records maintained by the cell phone provider.

6 **IV. DISCLAIMER VIOLATIONS**

7 The only basis for a disclaimer violation on the part of VFT would be if VFT  
8 was a political committee, and if it could be established that it was responsible for the  
9 distribution of the postcard. The disclaimer regulations state that all public  
10 communications<sup>19</sup>: (1) made by a political committee; or (2) by any person that  
11 expressly advocates the election or defeat of a clearly identified candidate; or (3)  
12 that solicits a contribution; or (4) that constitutes electioneering communications must  
13 include disclaimers. *See* 11 C.F.R. § 110.11(a)(1)-(4).

14 In this case, VFT most likely would not qualify as a political committee since  
15 it appears that it has not received contributions or made expenditures in excess of  
16 \$1,000 during a calendar year as required by the Act. *See* 2 U.S.C. §§ 431(4)(A),  
17 431(8)(A)(i), and 431(9)(A)(i).<sup>20</sup> In addition, the evidence does not establish that the

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<sup>19</sup> The postcard would constitute a "public communication" because that category encompasses "mass mailings" which are defined as "a mailing by United States mail of more than 500 pieces of mail of an identical or substantially similar nature within a 30 day period. *See* 11 C.F.R. §§ 100.26, 100.27. We have established that more than 25,000 postcards were sent by United States mail by Advanced Media.

<sup>20</sup> To address overbreadth concerns, the Supreme Court has held that only organizations whose major purpose is campaign activity can potentially qualify as political committees under the Act. *See e.g., Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986) ("MCFL"). The major purpose test is a limiting construction on the statutory definition of a "political committee," which means that an organization meeting the statutory threshold for political committee status must also possess the major purpose of campaign activity. *See MCFL*, 479 U.S. at 262.

1 major purpose of VFT was federal campaign activity or that VFT funds were  
2 expended to pay for the postcard. Consequently, we cannot establish that VFT was a  
3 political committee. Furthermore, we cannot recommend a finding that there is  
4 reason to believe VFT violated the disclaimer requirements since the postcard does  
5 not appear to contain express advocacy,<sup>21</sup> and the postcard did not contain a  
6 solicitation for contribution nor did they constitute an electioneering communication.

7 We also recommend that the Commission take no further action as to the  
8 unknown political committee regarding the 2 U.S.C. § 441d violation since there is no  
9 evidence to establish that a political committee, unknown or otherwise, was involved  
10 in the distribution of the postcard or the anonymous mailing of the flyers.

11 Accordingly, we recommend that the Commission find no reason to believe that  
12 Friends of Jeff Smith and Steve Smith, in his official capacity as treasurer and Joan  
13 Barry in Congress and Kirk Benjamin, in his official capacity as treasurer violated  
14 2 U.S.C. §§ 434(b) and 441a(f).

15 Lastly, the Commission previously found reason to believe that the Barry  
16 Committee violated 2 U.S.C. § 441d by failing to affix the appropriate disclaimer to  
17 all of the separable communications (flyers) contained in the press packet distributed  
18 in connection with the joint press conference held by the Barry and Smith  
19 Committees. The Barry Committee distributed only 12 press packets, which were

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<sup>21</sup>We concluded in the First General Counsel's Report that the postcard did not expressly advocate the election or defeat of a clearly identified candidate. *See* First General Counsel's Report at 3. The closest the postcard comes to meeting the definition of express advocacy set forth in 11 C.F.R. § 100.22 is the line, "Miss more work than 97% of your colleagues and get a promotion?" The reference to "get[ting] a promotion" arguably relates to Russell Carnahan's candidacy for Congress, but it could also be argued that the communication can be interpreted in different ways given that Carnahan was a sitting State representative.

1 not intended for general redistribution, containing the flyers at issue. In addition,  
2 there is no evidence that campaign funds were expended for distribution of the press  
3 packets. Although there is a violation, we feel the nature of the violation is minimal  
4 and it would not be an efficient use of the Commission's resources to pursue this  
5 matter. Therefore, we recommend that the Commission exercise its prosecutorial  
6 discretion and take no further action as to the Barry Committee with respect to  
7 2 U.S.C. § 441d.

8 V. [REDACTED]

9 [REDACTED]  
10 [REDACTED]  
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**VI. RECOMMENDATIONS**

1. Take no further action as to the unknown political committee;
2. Find no reason to believe that Friends of Jeff Smith and Steve Smith, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f);
3. Find no reason to believe that Joan Barry in Congress Committee and Kirk Benjamin, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f);
4. Take no further action as to Joan Barry in Congress and Kirk Benjamin, in his official capacity as treasurer, for its violation of 2 U.S.C. § 441d based on prosecutorial discretion;
5. Approve the appropriate letters;
6. Close the file; and
7. [REDACTED]

Thomasenia P. Duncan  
General Counsel


12/10/07  
DATE

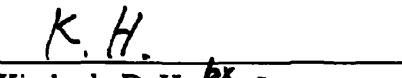
BY

  
Ann Marie Terzaken  
Associate General Counsel  
for Enforcement



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Sidney Rocke  
Assistant General Counsel

  
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Kimberly D. Hart  
Attorney

Attachments

1. Copies of Postcard and Flyers
2. Advanced Media purchase information for Postcard
3. Midwest Bank Centre information on VFT accounts

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MISS MORE VOTE than 97% of your  
colleagues and get a promotion?



## Has Rusty Carnahan gotten the job done in Jeff City?



When Gov. Holden ordered a 17 day emergency session  
to save MO public education, Rusty missed  
9 of the 17 days of work.



When the MO House voted to allow concealed weapons  
in our public places, Rusty missed a key vote.  
St. Louis Post Dispatch 3/7/03

In fact, Rusty missed  
more votes than all  
but 4 of his 163 colleagues  
in the State House this year.

Paid for by  
[www.rustycarnahan.org](http://www.rustycarnahan.org)

not authorized by any candidate or candidate committee

# Has Rusty Carnahan gotten the job done in Jeff City ?



When Gov. Holden ordered a 17 day emergency session to save MO public education, Rusty missed 9 of the 17 days of work.



When the MO House voted to allow concealed weapons in our public places, Rusty missed a key vote.  
St. Louis Post Dispatch 3/7/03

In fact, Rusty missed more votes than all but 4 of its 163 colleagues in the State House this year.

Paid for by  
[www.rustycarnahan.org](http://www.rustycarnahan.org)

**Not all Carnahans are created equal.**

not authorized by any candidate or candidate committee

E

# RUSS CARNAHAN

## THE ABSENT LEGISLATOR

**Russ Carnahan missed almost 60% of the two Special Legislative Sessions that determined the future of our education funding. (Source: House Journal, June and September 2003)**

**Russ Carnahan missed a vote to ban concealed weapons. (Source: HB 349, House Journal, March 6, 2003)**

**Russ Carnahan missed a vote to restrict landfill construction within 1/4 mile of a home or school. (Source: HA 13 HCS SS SCS SB 36, House Journal, April 30, 2003)**

**Russ Carnahan missed a vote to help prevent identity theft. (Source: HB 1762, House Journal, March 21, 2002)**

**Russ Carnahan missed a vote to help law enforcement. (Source: HB 1183, House Journal, March 15, 2004)**

**Russ Carnahan missed a vote that would have provided mental health services to Missourians. (Source: HB 1440, House Journal, March 21, 2002)**

**Russ Carnahan missed a vote to help disabled people be more independent. (Source: HB 923, House Journal, March 8, 2004)**

**Russ Carnahan missed a vote to help Missouri Reservists meet their training requirements. (Source: HB1822, House Journal, March 21, 2002)**

**Russ Carnahan missed a vote to establish a state suicide prevention plan. (Source: HCS HB 59 and 269, House Journal, DATE)**

**Russ Carnahan missed a vote to honor Korean War veterans. (Source: HCS HB 245, House Journal, DATE)**

**Russ Carnahan missed a vote to prohibit immunizations containing mercury. (Source: HS HCS HB 852, House Journal, DATE)**

**And he missed over 120 votes in just the last ten legislative months!**

**Sorry Russ...We need a Congressman who shows up for work!**

# RUSS CARNAHAN: NO SHOW, NO GO!

Russ Carnahan had one of the worst absentee records as a State Representative and he shouldn't be rewarded for it.

Russ missed almost 60% (10 of 17 days) of the Special legislative sessions while the future of education funding for our Missouri schools was being decided (House Journal, June and September, 2003)

Here are just some of the other important votes Russ has missed:

- Russ missed a vote that would help disabled people be more independent  
(HB 923, House Journal 3/8/04)
- Russ missed a vote that would have provided mental health services to Missourians  
(HB 1440, House Journal 3/21/02)
- Russ missed a vote that helped taxpayers get refunds when their property is wrongfully assessed  
(HB 60, House Journal 4/15/03)
- Russ missed a vote to help Missouri Reservists meet their training requirements  
(HB 1822, House Journal 3/21/02)
- Russ missed a vote creating a restitution fund to assist law enforcement  
(HB 1183, House Journal 3/15/04)
- Russ missed a vote to restrict landfills from being constructed within 1/4 mile of a residence, stream, creek or river  
(House Amendment 13, HCS SS SCS SB 36, 4/30/03)
- Russ missed a vote that would help prevent identity theft  
(HB 1762, House Journal 3/21/02)

**WHEN IT MATTERED, RUSS CARNAHAN WAS NOWHERE TO BE FOUND**

Russ didn't SHOW up for work,  
Russ shouldn't get to GO to Washington!!

G:

## Why is Russ Carnahan Lying About his Record?

**Russ says** in his TV ad and in his campaign literature that he is the only Democrat who voted against Conceal and Carry legislation.

**The Truth is** Joan Barry also voted against Conceal Carry legislation (as reported in the Post-Dispatch on 7/20/2004) AND Russ missed a crucial vote against the final version of the House bill on Conceal and Carry (as reported by the P-D 3/6/2003).

**Russ says** he worked hard in the Missouri House.

**The Truth is** Russ Carnahan...

- missed more votes than 97% of his colleagues, on issues affecting education, the environment, concealed carry of handguns, and landfills in our neighborhoods.
- missed 9 days of a 17-day special session to save MO's public education.
- has yet to sponsor a successful piece of legislation in the MO house.
- led the coordinated campaign that lost the MO House to Republicans.

**Russ says** he is the hardest working candidate.

**The Truth is** that even though he has the best name in Missouri politics...

- 9 fellow Democrats are running against him.
- He trails Jeff Smith (a first-time candidate) in fundraising.
- He had to buy door-to-door "volunteers" through a company called Grassroots Solutions.
- His five issue statements on his website average three sentences each.

**Russ says** he wants to carry on his family tradition.

**The Truth is** that he is not capable of doing so. He is an apple that fell far from the Carnahan tree.

We all like the Carnahans. But the next Congressman is likely to hold the seat for 25-30 years. Let's not be so loyal to our friends in high places, that we forget what is good for the whole community. **Vote for a competent candidate on August 3<sup>rd</sup>.**

- A concerned supporter of Mel, Jean, and Robin Carnahan

Attachment 1  
Page 5 of 5

28044191055

Advanced Media Publications, Inc.  
383 Dorchester Ave. Suite 110  
Boston, MA 02127  
USA

Voice: 617-269-6080  
Fax: 617-269-5080

# Invoice

Invoice Number:  
46ORD-30010953

Invoice Date:  
Jul 15, 2004

Page:  
1

Duplicate

Sold To:  
Voters for Truth  
PO Box 220853  
St. Louis, MO 63122

Ship to:

Customer ID		Customer PO		Payment Terms	
Voters for Truth				Prepaid	
Sales Rep ID		Shipping Method		Ship Date	Due Date
					7/15/04
Quantity	Item	Description	Unit Price	Extension	
1.00	pos3qp25m	25,000 4.25" x 6" Full Color Postcard, 12pt. Card Stock with Aqueous Gloss Coating	1,050.00	1,050.00	
1.00		Mailing Services	960.00	960.00	
1.00		First Class Postage	4,961.55	4,961.55	

Check/Credit Memo No: 529692

Subtotal	6,971.55
Sales Tax	
Total Invoice Amount	6,971.55
Payment/Credit Applied	6,971.55
<b>TOTAL</b>	<b>0.00</b>

Attachment 2  
Page 1 of 5

28044191056

Advanced Media Publications, Inc.  
383 Dorchester Ave. Suite 110  
Boston, MA 02127  
USA

Voic: 617-269-6080  
Fax: 617-269-5080

# Invoice

Invoice Number:  
48CRD-30011877

Invoice Date:  
Jul 27, 2004

Page:  
1

Duplicate

Sold To:  
Voters for Truth  
PO Box 220853  
St. Louis, MO 63122

Ship to:

Customer ID Voters for Truth		Customer PO		Payment Terms Prepaid	
Sales Rep ID		Shipping Method		Ship Date	Due Date
					7/27/04
Quantity	Item	Description	Unit Price	Extension	
1.00	pos3qp25m	25,000 4.25" x 6" Full Color Postcard. 12pt. Card Stock with Aqueous Gloss Coating	1,050.00	1,050.00	
1.00		Mailing Services	960.00	960.00	
1.00		Mailing Postage First Class	4,961.55	4,961.55	

Check/Credit Memo No: 529694

Subtotal 6,971.55  
Sales Tax  
Total Invoice Amount 6,971.55  
Payment/Credit Applied 6,971.55  
TOTAL 0.00

Attachment 7  
Page 2 of 5

28044191057



28044191058

7/21/2004

48 HOUR PRINT.COM  
DAILY REPORT

Mail Piece Width

Job #	48HR1	Client	Quantity	Pieces Due	Pieces Received	Date Received	Date Processed	Date Not Received	Job Status	Firm Agpt or Actual Postage Date?	Mail Date
1241	30007874	18 HOUR	18,0007						HOLD		
1283	30008851	18 HOUR	15,0007						HOLD		
1327	30008500	48 HOUR	10007						HOLD		
1374	30010344	ELLJAH COMPANY	100007						Wait for Print & Data		
1379	30010452	TAPA	1488		7/20 8:30	7/14/2004	7/15/2004	Data Processed	Completed		7/21/2004 481.58
1388	30010688	JP JEWELERS	2,500		7/20 8:30	7/15/2004	7/19/2004	Data Processed	Completed		7/21/2004 485.71
1396	30010922	PENNEL &	5,0007						Wait for Print & Data	X	7/26/2804
1402	30010938	BLUE SKY 880	10008			7/10/2004	7/19/2004	Data Encoded	Wait for Print		2160.78
1397	30010953	VOTERS FOR	25,000		7/19 3:15	7/20/2004	7/20/2004	Data Processed	Completed	X	7/21/2004 4408.07
1405	30011118	TITAN SPORTS	1000			7/19/2004	7/20/2004	Data Processed	Wait for Print		178.00
1421	30011118	GRAVGRAPH	15007						Wait for Print & Data		
1408	30011163	MIDWEST	1050						Wait for Print & Data		
1409	30011169	RENEX	5000			7/19/2004	7/20/2004	Data Processed	Wait for Print		851.80
1411	30011197	ULTIMATE	581			7/20/2004		Data Received	Wait for Print		
1414	30011228	THREADCOUNTZ	1385			7/20/2004	7/20/2004	Data Processed	Wait for Print		273.26
1418	30011315	NEXFUSION	19257						Wait for Print & Data		
1419	30011325	STAR PLAYERS	26007						Wait for Print & Data		
1420	30011345	EDOCSECURE	26007						Wait for Print & Data		
30011361		POINT OF VIEW	82007						Wait for Print & Data		

28044191059

7/30/2004

# 48 HOUR PRINT.COM DAILY REPORT

Mail Piece Size Width

Job #	48HRP #	Client	Quantity	Pieces Out	Pieces Received	Data Received	Data Processed	Data Status	Job Status	Firm Date?	Approx Mail Date	Postage
1241	30007874	48 HOUR	15,000?					Data Not Received	HOLD			
1283	30008051	48 HOUR	15,000?					Data Not Received	HOLD			
1327	30008050	48 HOUR	1000?					Data Not Received	HOLD			
1398	30010822	PENNEL &	5,000?					Data Not Received	CREDIT HOLD	X	7/28/2004	
1405	30011115	TITAN SPORTS	1000		7/29 12:00	7/29/2004	7/29/2004	Data Processed	Completed		7/30/2004	176.00
1418	30011315	NEXFUSION	1729		7/29 12:00	7/29/2004	7/29/2004	Data Processed	Completed		7/30/2004	323.36
1420	30011345	EDOCSECURE	2500		7/29 12:00	7/30/2004	7/30/2004	Data Processed	Ready to Run			517.19
1457	30011498	PRECISION	2495		7/29 12:00	7/29/2004	7/29/2004	Data Processed	Completed		7/30/2004	750.42
1446	30011497	EDIFICE	1200?		7/29 12:00			Data Not Received	Wait for Data			
1431	30011545	INDEPENDENT	10,000?			7/29/2004		Data Received	Wait for Print			
1440	30011616	SMALL FEATS	2461		7/30 12:00	7/29/2004	7/29/2004	Data Processed	Ready to Run			449.41
1444	30011711	ELIJAH	9581			7/29/2004	7/29/2004	Data Processed	Wait for Print			1856.89
1447	30011729	EQUITY	12853?					Data Not Received	Wait for Print & Data			
1452	30011740	WEBEDITION	3043			7/27/2004	7/27/2004	Data Processed	Wait for Print			668.99
1450	30011744	WEBEDITION	1712			7/27/2004	7/27/2004	Data Processed	Wait for Print			379.21
1451	30011745	RX-SAVER	2428		7/30 12:00	7/27/2004	7/27/2004	Data Processed	Ready to Run			470.93
1453	30011749	LEAD VENTURES	886			7/27/2004	7/27/2004	Data Processed	Wait for Print			176.14
1454	30011756	TIMESAVESFTW	990		7/30 12:00	7/29/2004	7/29/2004	Data Processed	Ready to Run			196.07
1455	30011769	ADROTECH	4988		7/30 12:00	7/29/2004	7/29/2004	Data Processed	Ready to Run			880.45
1474	30011817	KELLY	2500?					Data Not Received	Wait for Print & Data			
1458	30011853	THE PORCUPINE	2023			7/29/2004	7/29/2004	Data Processed	Wait for Print			426.89
1466	30011864	SKETCHES	4798			7/30/2004	7/30/2004	Data Processed	Wait for Print			980.44
1460	30011877	VOTERS FOR	25000		7/30 9:00	7/29/2004	7/29/2004	Data Processed	Completed		7/30/2004	4400.00
1459	30011882	PERMILIGHT	8498			7/29/2004	7/29/2004	Data Processed	Wait for Print			1854.30
1465	30011981	THE MADDOX	1000?					Data Not Received	Wait for Print & Data			
1470	30012056	MILES	2500?					Data Not Received	Wait for Print & Data			
1471	30012053	VICID	1000			7/29/2004	7/29/2004	Data Processed	Wait for Print			216.77

Page

of

5

Attachment

tracking_id	tracking_usr	tracking_date	tracking_time	tracking_company	tracking_addressone	tracking_city	tracking_state	tracking_country	tracking_zip	tracking_phone
'48ORD-3001111111'	'51F2734936'	'07/15/2004'	'12:56:06'	'Volans for Truth'	'PO Box 220853'	'St Louis'	'Missouri'	'United States'	'63122'	'(636)268-7029'
'48ORD-3001111111'	'51F2734936'	'07/27/2004'	'16:18:25'	'Volans for Truth'	'PO Box 220853'	'PO Box 220853'	'Missouri'	'United States'	'63122'	'(636)268-7029'

Attachment

Page

5

of

5

## Midwest BankCentre

## SIGNATURE CARD

Account Holder Name(s): VOTERS FOR TRUTH

Reporting SSN

Mailing Address

Street Location

Telephone Number

Number of Signatures Required: 1

CIF Number:

Signatures of Authorized Individuals: This Agreement is subject to all terms below.

  
 JASON R. WATHEN, Agent of VOTERS FOR TRUTH

(Signatures and printed names of each account signer)

The authorized Agent(s) signing above agree(s) that the Account Holder's Account(s) will be governed by the terms set forth in the Deposit Account Agreement and Disclosure, the Time Certificate of Deposit or Confirmation of Time Deposit Agreement (if applicable), the Rate and Fee Schedule, the Funds Availability Policy Disclosure, and the Electronic Funds Transfer Agreement and Disclosure, if requested below, as amended by the Financial Institution from time to time. The authorized Agent(s) also acknowledge that they have received at least one copy of these deposit account documents.

Account Purpose: Non Consumer

EFT Services: No

BUSINESS TYPE: Unincorporated Association

ACCOUNT TYPE Classic Business Checking							
ACCOUNT NUMBER				OPENED BY BLW			
Date Opened	Date Revised	Opening Deposit	ATM Card	Verified By	Account Formerly With		
07-22-04		\$5,000.00	N	BLW			
Date Closed	Closing Balance	Closed By	Reason For Closing		Statement Disposition	Service Chg Disposition	
					Mail	Regular	

ACCOUNT TYPE							
ACCOUNT NUMBER				OPENED BY			
Date Opened	Date Revised	Opening Deposit	ATM Card	Verified By	Account Formerly With		
Date Closed	Closing Balance	Closed By	Reason For Closing		Statement Disposition	Service Chg Disposition	

ACCOUNT TYPE							
ACCOUNT NUMBER				OPENED BY			
Date Opened	Date Revised	Opening Deposit	ATM Card	Verified By	Account Formerly With		
Date Closed	Closing Balance	Closed By	Reason For Closing		Statement Disposition	Service Chg Disposition	

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 Attachment 2  
 Page 1 of 3

28044191061

## Midwest BankCentre

## SIGNATURE CARD

Account Holder Name(s): VOTERS FOR TRUTH

Reporting SSN: [REDACTED]

Mailing Address: [REDACTED]

Street Location: [REDACTED]

Telephone Number: [REDACTED]

PO BOX 22000 ST. LOUIS, MO 63122

PO BOX 22000 ST. LOUIS, MO 63122

(314) 220-7022 (314) 220-7022

Number of Signatures Required: 1 CIF Number:

Signatures of Authorized Individuals. This Agreement is subject to all terms below.

  
 PETER P. McELLIOTT, Agent of VOTERS FOR TRUTH

 x   
 MILTON H. OHLSEN 111, Agent of VOTERS FOR TRUTH

(Signatures and printed names of each account signer)

The authorized Agent(s) signing above agree(s) that the Account Holder's Account(s) will be governed by the terms set forth in the Deposit Account Agreement and Disclosure, the Time Certificate of Deposit or Confirmation of Time Deposit Agreement (if applicable), the Rate and Fee Schedule, the Funds Availability Policy Disclosure, and the Electronic Funds Transfer Agreement and Disclosure, if requested below, as amended by the Financial Institution from time to time. The authorized Agent(s) also acknowledge that they have received at least one copy of these deposit account documents.

Account Purpose: Non Consumer

EFT Services: No

BUSINESS TYPE: Unincorporated Association

## ACCOUNT TYPE Classic Business Checking

ACCOUNT NUMBER						OPENED BY DCG	
Date Opened	Date Revised	Opening Deposit	ATM Card	Verified By	Account Formerly With		
07-22-04		\$17,750.00	N	CH			
Date Closed	Closing Balance	Closed By	Reason For Closing		Statement Disposition	Service Chg Disposition	
					Mail	Regular	

## ACCOUNT TYPE

ACCOUNT NUMBER						OPENED BY	
Date Opened	Date Revised	Opening Deposit	ATM Card	Verified By	Account Formerly With		
Date Closed	Closing Balance	Closed By	Reason For Closing		Statement Disposition	Service Chg Disposition	

## ACCOUNT TYPE

ACCOUNT NUMBER						OPENED BY	
Date Opened	Date Revised	Opening Deposit	ATM Card	Verified By	Account Formerly With		
Date Closed	Closing Balance	Closed By	Reason For Closing		Statement Disposition	Service Chg Disposition	

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Attachment 2Page 2 of 3

28044191062

## Midwest BankCentre

## SIGNATURE CARD

Account Holder Name(s): VOTERS FOR TRUTH

Reporting SSN

Mailing Address: PO BOX 22885 ST LOUIS, MO 63112

Street Location: PO BOX 22885 ST LOUIS, MO 63112

Telephone Number: (314) 288-7029 FAX: (314) 288-7029

Number of Signatures Required: 1 CIF Number:

Signatures of Authorized Individuals. This Agreement is subject to all terms below.

x *Jason Mathen*  
 JASON MATHEN, Agent of VOTERS FOR TRUTH

(Signatures and printed names of each account signer)

The authorized Agent(s) signing above agree(s), that the Account Holder's Account(s) will be governed by the terms set forth in the Deposit Account Agreement and Disclosure, the Time Certificate of Deposit or Confirmation of Time Deposit Agreement (if applicable), the Rate and Fee Schedule, the Funds Availability Policy Disclosure, and the Electronic Funds Transfer Agreement and Disclosure, (if requested below), as amended by the Financial Institution from time to time. The authorized Agent(s) also acknowledge that they have received at least one copy of these deposit account documents.

Account Purpose: Non Consumer

EFT Services: No

BUSINESS TYPE: Unincorporated Association

## ACCOUNT TYPE Classic Business Checking

ACCOUNT NUMBER				OPENED BY BLW			
Date Opened	Date Revised	Opening Deposit	ATM Card	Verified By	Account Formerly With		
07-22-04		\$5,000.00	N	BLW 7/22/04			
Date Closed	Closing Balance	Closed By	Reason For Closing		Statement Disposition	Service Chg Disposition	
					Mail	Regular	

## ACCOUNT TYPE

ACCOUNT NUMBER				OPENED BY			
Date Opened	Date Revised	Opening Deposit	ATM Card	Verified By	Account Formerly With		
Date Closed	Closing Balance	Closed By	Reason For Closing		Statement Disposition	Service Chg Disposition	

## ACCOUNT TYPE

ACCOUNT NUMBER				OPENED BY			
Date Opened	Date Revised	Opening Deposit	ATM Card	Verified By	Account Formerly With		
Date Closed	Closing Balance	Closed By	Reason For Closing		Statement Disposition	Service Chg Disposition	

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Attachment 3  
 Page 3 of 3

28044191063